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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 163.

[redacted] JOHN F. JOHNSON, CLAIMANTS OF [redacted] AND TWENTY BALES OF COTTON,

vs.

THE UNITED STATES.

[redacted]

# SUPREME COURT OF THE UNITED STATES.

## No. 163.

JOSIAH MORRIS AND JOHN F. JOHNSON, CLAIMANTS OF ONE HUNDRED AND TWENTY BALES OF COTTON, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

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1 UNITED STATES OF AMERICA, *Middle District of Alabama:*

At a District Court of the United States for the middle district of Alabama, began and held at Montgomery, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and sixty-six, present the Honorable Richard Busteed, judge presiding, the following proceedings were had, to wit:

District Court of the United States for the middle district of Alabama.

*Information.*

UNITED STATES OF AMERICA:

To the honorable the judge of the District Court of the United States for the middle district of Alabama:

James Q. Smith, esq., attorney of the United States for said district, who prosecutes for the United States, and exhibits this information against a certain one hundred and twenty bales of cotton, on land, marked T. H. Watts and Josiah Morris and John F. Johnson, who are resident citizens of the district aforesaid, and within the jurisdiction of said court, and against all persons lawfully intervening for their interest therein; and thereupon the said attorney doth allege, articulately propound, and give the said judge to understand that heretofore, that is to say, in and during the years 1861, 1862, 1863, 1864, and up to the day of May, in the year one thousand eight hundred and sixty-five, an insurrection or rebellion

2 existed in certain States of she United States against the laws and authority of the United States, composed of the States of North and South Carolina, Florida, Georgia, Texas, Mississippi, Tennessee, Arkansas, Alabama, and parts of Virginia, which said States were organized under the name and style of "the Confederate States of America," and carrying on rebellion and insurrection against the United States, to dissolve the Union of States thereunder and establish a government within said United States, of the name and after the style aforesaid.

2d. That heretofore, that is to say, in and during the year eighteen hundred and sixty-one, and during the existence of said insurrection or rebellion, and for the purpose of suppressing the same, the Congress of the United States passed an act, entitled "An act to confiscate property used for insurrectionory purposes," approved August the 6th, 1861, providing, among other things, that after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshall by law, that property used or permitted to be used in the manner therein prescribed is declared to be lawful subject of prize and capture, wherever found, and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned.

3d. That heretofore, that is to say, in and during the years aforesaid, after the passage of the act aforesaid, and after the publication by the President of the United States of the proclamation mentioned in said act, Thomas H. Watts, a resident of the district aforesaid, and being the owner of the one hundred and twenty bales of cotton aforesaid, on land, in the district aforesaid, subscribed and
3 sold the same to the late so-called Confederate States, through one James A. Farley, in the city of Montgomery, in the district aforesaid, the said James A. Farley being a duly authorized agent or officer of said Confederate States to purchase cotton therefor, and pay for the same in bonds and paper currency issued by said Confederate States, for the purpose of rebellion and resistance to the laws and authority of the United States, said cotton being sold and subscribed knowingly by the said Thomas H. Watts, with the intent that the same should be used or employed in aiding, abetting, or promoting said rebellion and insurrection, and knowingly used and employed, or consented to the use and employment of, the same as aforesaid, with the intent aforesaid. An original sheet of sale or subscription lists, used by the agents or officers of said Confederate States, is hereto attached, marked Exhibit A, which is to be taken as part of this information.

4th. That heretofore, that is to say, in and during the years aforesaid, in the district aforesaid, after the passage of the act aforesaid, and after the publication of the President's proclamation aforesaid, the said one hundred and twenty bales of cotton were sold or given, by the said Thomas H. Watts, with intent to use or employ the same, or suffer the same to be used and employed, in aiding, abetting, and promoting said insurrection or resistance to the laws of the United States. That the said James A. Farley, agent or officer as aforesaid, purchased and acquired said cotton from the said Thomas H. Watts, with the intent to use or employ the , or suffer the same to be used or employed, in aiding, abetting, and promoting said insurrection or resistance to the laws of the United States, or any person or persons engaged therein.

4 5th. That heretofore, that is to say, in and during the years aforesaid, the passage of the act aforesaid, and after the publication of the proclamation of the President of the United States mentioned in said act, and after said cotton was sold or given, purchased or acquired, as aforesaid, and with the intent aforesaid, the said James A. Farley, agent, or as officer, as aforesaid, took possession of the same, and caused it to be stored and warehoused in a cotton warehouse in the city of Montgomery, district aforesaid, known and designated as the warehouse of John F. Johnson & Co., on account of the said James A. Farley, agent or officer as aforesaid, subject to any disposition thereof to be made of the same by the said Confederate States. That large quantities of other cotton, sold or given, purchased or acquired, as aforesaid, with intent aforesaid, were also stored in said warehouse, and in other cotton warehouses in said city, to the number of twenty thousand bales, and was at all time during said years subject to the order and direction of said Con-

federate States, through the said James A Farley, agent or officer as aforesaid, and that during said years the said James A. Farley, as aforesaid, received orders to cause to be shipped portions thereof to certain ports within the lines of the said Confederate States, with the intent and for the purpose of running the same through said ports, then blockaded by the United States, in vessels belonging to or chartered by the said Confederate States, for blockade purposes, thereby aiding, abetting, and promoting said insurrection and resistance to the laws of the United States, or to persons engaged therein. That during the years aforesaid, and during said rebellion, other orders were issued by said Confederate States, directing the said James A. Farley, as aforesaid, to turn over to certain cotton factories in the employment of the said Confederate States in the making cloth, to be used for clothing and other articles, for the use of
5 the soldiers of the army of the said Confederate States; that other orders were received by the said James A. Farley, during the years aforesaid, acting as aforesaid, to sell certain quantities thereof for currency, to pay the soldiers and other persons engaged in insurrection and resistance to the laws of the United States; that the said one hundred and twenty bales, marked as aforesaid, and subject to the orders and directions aforesaid, remained stored in said warehouse from the time the same came into the possession and control of the said James A. Farley, as aforesaid, until the blank day of April, 1865, as will more fully appear from a copy of the entry made on the books of said warehouse, hereto attached. marked Exhibit B, and which is considered as part of this information.

6. That heretofore, that is to say, in and during the years aforesaid, in the district aforesaid, after the passage of the act aforesaid, and the publication of the proclamation aforesaid, during the existance of the insurrection and rebellion aforesaid, and after the passage of a certain other act of Congress, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes," approved 17 July, 1862, the said Thomas H. Watts the owner of said cotton acted as an officer of the rebels in arms against the United States as a cabinet officer of the said Confederate States, as a pretended governor of the State of Alabama, being one of the States of the late so-called Confederate States of America; accepted office or agency under the government of the said Confederate States; since the pretended ordinance of secession of the State of Alabama, and taken an oath of allegiance to, or to support the constitution of the so-called Confederate States, and aided and abetted said rebellion and not
6 within sixty days after public warning by proclamation of the President of the United States cease to aid, countenance, and abet said rebellion and return to his allegiance to the United States; whereby, and under the provisions of said acts and proclamations aforesaid, said one hundred and twenty bales of cotton, the property of the said Thomas H. Watts, became and were liable to seizure, condemnation, and sale.

7. That heretofore, to wit, that is to say, on or about the fifth

day of May, in the year one thousand eight hundred and sixty-five, the army of the rebellion, under the command of R. Taylor, lieutenant general, capitulated and surrrndered to Major General E. R. S. Canby, commanding United States forces at New Orleans, (the district aforesaid being within the command of said Taylor,) and among other conditions of said capitulation or surrender, all the property of the Confederate States government to be turned over to the officers appointed for that purpose on the part of the government of the United States; whereby and by virtue of the conditions of said capitulation and surrender, and by virtue of General Field Orders No. 39, issued thereunder, dated at Mobile, May the 10th, 1865, the said one hundred and twenty bales of cotton, the property of the Confederate States in said district, became, and were the property of the United States. Copies of said surrender and orders are hereto attached marked Exhibit C & D, which are to be considered as part of this information.

8. That heretofore, that is to say, on the day of , 1865, the said Josiah Morris and the said John F. Johnson, well knowing the premises, but not regarding the same, wrongfully, and without authority from the United States, or from any lawfully author-
7 ized agent thereof, fraudulently moved said one hundred and twenty bales of cotton from said warehouse of J. F. Johnson & Co., (the said J. F. Johnson being the owner of said warehouse,) sold the said cotton to one Floyd, and appropriated the proceeds thereof to their own use; that said cotton was of great value, that is to say, the sum of twenty-five thousand dollars; that each and every bale of said cotton so taken and appropriated as aforesaid weighed about five hundred pounds, (500) and worth 50 cents per lb., contrary to the statute of the United States in such case made and provided. The Attorney of the United States, in behalf of the United States, saith that all and singular the premises are true.

Wherefore, he prays that a summons may issue out of said court in due form and law, directed to the marshal of said district, commanding him to summon the said Josiah Morris and the said John F. Johnson, that they may be and appear at the next term of said court to answer this information, and show cause at the return term thereof (if any they have) why such forfeiture should not be decreed and that judgment should not be rendered against the said Morris and the said Johnson for the value in money of said one hundred and twenty bales of cotton, to be ascertained by the court, together with costs, expenses, and damages for the wrongful, appropriation thereof, as by law they ought to pay, and for all other relief as may be decreed legal and proper in the premises.

JAMES Q. SMITH, *U. S. Dist. Atto.*

8 In the District Court of the U. S., Middle Dist. Ala.

UNITED STATES OF AMERICA
*vs*
120 BALES COTTON, JOSIAH MORRIS & J. F. JOHNSON. } Information. No.

*Interrogatories to defendants or any claimants to this suit.*

Interrogatories to any claimant or defendant in the above proceedings:

Interrogatory 1st. Where do you reside? and how long have you resided there? What is your business, profession or occupation? and how long have you been thus engaged?

Interrogatory 2nd. Did you, in the month of April, 1865, or at any other time during said year, move, or caused to be moved, one hundred and twenty bales of cotton, marked T. H. Watts, from the warehouse known as the cotton warehouse of J. F. Johnson & Co., in the city of Montgomery? If yes, who did you direct said cotton to be moved by? When did you direct that said cotton should be moved, and to what place was it to be moved? What did you pay for moving or hauling said cotton? To whom did you pay it, and when? Give day and date in full, and attach the original or copy of order given for the removal if in writing; if not, give the substance thereof as near as possible.

Interrogatory 3rd. Did the said cotton belong to you? If so, attach a copy or original bill or bills of sale. From whom did you purchase? What did you pay per lb. or bale? give day and date, and names; and attach the bill or bills of sale or purchase to your answer, or state why you do not do so?

Interrogatory 4th. What have you done with said cotton? Where is it now? Have you sold it, and to whom? When and where did you sell the same? Give day, dates, and names of purchaser, and attach bill or bills of sale or copies thereof to your answer
9 to this interrogatory, or state why you do not do so?

Interrogatory 5th. Did or no Tomany, U. S. Treasury agent at Mobile, call on you for said cotton, or demand a settlement herefor? If so, when was the call or demand made? What the name of the person instructed by said treasury ag't to make demand or settlement? Was it in writing? Where made? and state fully the substance of said demand and your reply. And state all the conversation which took place on that occasion in reference to the said 120 bales of cotton.

JAMES Q. SMITH, *Att'y of U. S. for U. S.*

*Exhibit A.—Subscriptions of crop for defence of the Confederate States.*

CONFEDERATE STATES OF AMERICA, *March 20th*, 1861.

We, the subscribers, agree to contribute to the defence of the Confederate States the portion of our crops set down to our respective names, the same to be placed in warehouse, or in our factor's hands, and sold on or before the 1st day of June, 1862, next; and the nett proceeds of sale we direct to be paid over to the treasurer of the Confederate States, for bonds for same amount bearing 8 per cent. interest.

N. B.—The agent in charge of this subscription will fill the blank as to the date of sale, with the month best suited to the locality of the subscriber; in all cases selecting the earliest practicable date.

| Names. | Quantity subscribed. | Place of delivery. | Name of factor or warehouse. |
|---|---|---|---|
| C. C. Knowles | 10 bales | Montgomery | M. E. Vaughn. |
| William Kilcrease | 2 " | " | " |
| T. I. Dismurkes | 6 " | " | " |

10 *Exhibit B.*

Sept. 1st, 1862. Hon. T. H. Watts. Marks. T. H. Watts. Freight, $82 50.

Storage paid to May 1, '63.

Storage paid to May 1, '65.

Sept. 1st, '65. Transferred to ac.

JAMES A. FARLEY,
*Ag't C. S. A.*

| Nos. | Weights. | Nos. | Weights. | Nos. | Weights. | Nos. | Weights. | Nos. | Weights. | Nos. | Weights. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 161 | 420 | 129 | 442 | 97 | 556 | 65 | 510 | 33 | 516 | 1 | 510 |
| 162 | 450 | 130 | 476 | 98 | 566 | 66 | 548 | 34 | 494 | 2 | 510 |
| 163 | 480 | 131 | 428 | 99 | 470 | 67 | 464 | 35 | 468 | 3 | 444 |
| 164 | 544 | 132 | 460 | 100 | 508 | 68 | 468 | 36 | 534 | 4 | 440 |
| 165 | 476 | 133 | 460 | 101 | 420 | 69 | 456 | 37 | 500 | 5 | 436 |
| | | 134 | 474 | 102 | 456 | 70 | 440 | 38 | 480 | 6 | 480 |
| | | 135 | 470 | 103 | 564 | 71 | 458 | 39 | 508 | 7 | 482 |
| | | 136 | 510 | 104 | 444 | 72 | 540 | 40 | 480 | 8 | 500 |
| | | 137 | 504 | 105 | 480 | 73 | 444 | 41 | 550 | 9 | 540 |
| | | 138 | 474 | 106 | 494 | 74 | 512 | 42 | 472 | 10 | 508 |
| | | 139 | 442 | 107 | 470 | 75 | 480 | 43 | 420 | 11 | 464 |
| | | 140 | 530 | 108 | 466 | 76 | 464 | 44 | 456 | 12 | 558 |
| | | 141 | 448 | 109 | 490 | 77 | 586 | 45 | 570 | 13 | 520 |
| | | 142 | 468 | 110 | 470 | 78 | 506 | 46 | 450 | 14 | 580 |
| | | 143 | 558 | 111 | 442 | 79 | 470 | 47 | 520 | 15 | 520 |
| | | 144 | 460 | 112 | 498 | 80 | 500 | 48 | 544 | 16 | 462 |
| | | 145 | 584 | 113 | 470 | 81 | 456 | 49 | 476 | 17 | 558 |
| | | 146 | 540 | 114 | 500 | 82 | 478 | 50 | 494 | 18 | 470 |
| | | 147 | 426 | 115 | 490 | 83 | 460 | 51 | 500 | 19 | 468 |
| | | 148 | 408 | 116 | 560 | 84 | 470 | 52 | 552 | 20 | 508 |
| | | 149 | 450 | 117 | 466 | 85 | 550 | 53 | 434 | 21 | 442 |
| | | 150 | 456 | 118 | 544 | 86 | 430 | 54 | 474 | 22 | 424 |
| | | 151 | 436 | 119 | 584 | 87 | 504 | 55 | 432 | 23 | 446 |
| | | 152 | 450 | 120 | 470 | 88 | 480 | 56 | 450 | 24 | 542 |
| | | 153 | 484 | 121 | 420 | 89 | 510 | 57 | 442 | 25 | 480 |
| | | 154 | 504 | 122 | 438 | 80 | 508 | 58 | 450 | 26 | 520 |
| | | 155 | 550 | 123 | 504 | 91 | 476 | 59 | 474 | 27 | 524 |
| | | 156 | 520 | 124 | 484 | 92 | 500 | 60 | 474 | 28 | 438 |
| | | 157 | 460 | 125 | 524 | 93 | 520 | 61 | 460 | 29 | 456 |
| | | 158 | 490 | 126 | 462 | 94 | 476 | 62 | 494 | 30 | 490 |
| | | 159 | 458 | 127 | 434 | 95 | 472 | 63 | 508 | 31 | 438 |
| | | 160 | 400 | 128 | 450 | 96 | 570 | 64 | 476 | 32 | 606 |

11 *Exhibit C.*

Memorandum of the conditions of the surrender of the forces, munitions of war, &c., in the department of Alabama, Mississippi, and East Louisiana, commanded by Lieut. General Richard Taylor, Confederate States army, to Major General Edward R. S. Canby, United States army, entered into on the 4th day of May, 1865, at Citronelle, Alabama.

I. The officers and men to be paroled until duly exchanged, or otherwise released from the obligations of their parole by the authority of the government of the United States. Duplicate rolls of all officers and men surrendered to be made, and one copy of which to be delivered to the officer appointed by Major Gen'r'l Canby, and the other to be retained by the officer appointed by Lieutenant General Taylor; officers giving their individual paroles, and commanders of regiments, batteries, companies, or detachments, signing a like parole for the men of their respective commands.

II. Artillery, small arms, ammunition, and other property of the confederate government, to be turned over, the officers appointed for that purpose on the part of the government of the United States. Duplicate inventories of the property surrendered to be prepared, one copy to be retained by the officers delivering, and the other by the officer receiving it, for the information of their respective commands.

III. The officers and men, paroled under this agreement will be allowed to return to their homes with the assurance that they will not be disturbed by the authorities of the United States so long as they continue to observe the conditions of their parole and the laws in force where they reside, except that persons, residents of
12 northern States, will not be allowed to return without permission.

IV. The surrender of property will not include the side arms or private horses or baggage of officers.

V. All horses, which are in good faith the private property of enlisted men, will not be taken from them. The men will be permitted to take such with them to their homes, to be used for private purposes only.

VI. The time and place of surrender will be fixed by the respective commanders, and will be carried out by commissioners appointed by them.

VII. The terms and conditions of the surrender to apply to the officers and men belonging to the armies lately commanded by Generals Lee and Johnson now in this dep't.

VIII. Transportation and subsistence to be furnished at public costs for the officers and men, after the surrender, to the nearest practicable point to their homes.

(Signed) R. TAYLOR,
*Lieut. General.*

(Signed) E. R. S. CANBY,
*Major General.*

The words "by the United States" erased, and the words "at public cost" inserted before signing.

Official copy:

WICKAM HOFFMAN,
*Major, Assistant Adjutant General.*

13 *Exhibit D.*

[General Field Orders, No. 39.]

HEADQUARTERS ARMY AND DIVISION OF WEST MISSISSIPPI,
*Mobile, Ala., May 10th,* 1865.

The cotton belonging to the confederate government in East Louisiana, Mississippi, Alabama, and West Florida, having been surrendered to the government of the United States, its sale to private individuals, or its transfer to any persons except the officers of that government, is prohibited. This order applies to all cotton procured by subscription to the cotton loan by sale of confedrate bonds or notes, by the tax in kind, or by any other process by which the title was vested in the confederate government, whether in the possession of the agent of that government, or still in the hands of the producers; and all persons in whose charge it may be will be held accountable for it delivery to the agents of the United States. Commanders of districts will be furnished with a transcript from the records of the cotton agents, showing the quantity and locality of the cotton within the limits of their commands, and will give the agents of the Treasury Department appointed to receive it such facilities as may be necessary to enable them to secure it.

Any sales of this property in violation of this order will treated as the embezzlement of public property.

By order Major General E. R. S. Canby.

C. T. CHRISTENSEN,
*Lt. Colonel, Ass't Adjutant General.*

Official:

NATHANIEL BRUBANK,
*1st Lieut. and A. A. A. General.*

14 District Court of the United States for the middle district of Alabama.

*Summons.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal of said district, greeting:

You are hereby commanded to summon Josiah Morris and John F. Johnson, who are citizens of the State of Alabama, to be and appear before the honorable the judge of the said court, at the place of holding said court, at Montgomery, on the 4th Monday of November next, to answer to a libel of information filed in said court, at the instance of

the United States of America, against one hundred and twenty (120) bales of cotton, Josiah Morris, and John F. Johnson. Herein fail not to have then and there this writ.

Witness the Hon. Richard Busteed, judge of the said court, 4th Monday of May, in the year of our Lord one thousand eight hundred and sixty-six.

Issued the 12th day of July, in the year of our Lord one thousand eight hundred and sxty-six.

Attest :

[SEAL.] E. C. V. BLAKE,
*Clerk D. C. Middle District of Alabama.*

*Marshal's return.*

Received July 23; executed by serving copy of this writ upon Josiah Morris, July 23, 1866.

Executed by serving copy on J. F. Johnson, August 21, 1866.

JOHN HARDY,
*U. S. Marshal.*

15 District Court of the United States for the middle district of Alabama.

THE UNITED STATES OF AMERICA
*vs.*
120 BALES OF COTTON, MARKED T. H. WATTS and Josiah Morris and John F. Johnson.

The said Josiah Morris and John F. Johnson, answering to said information, admit the facts as propounded in the 1st and 2nd articles of said information.

Answering to the 3rd, 4th, 5th, 6th and 7th articles of said information, they state that they have no actual personal knowledge of the facts propounded therein, but for all the purposes of this proceeding in its present stage, and to that extent only, they are willing to admit, and do admit, the same, except as hereinafter stated and set forth; and for further answer to said articles 3, 4, 5, 6, and 7, they state that on the day October, 1865, Andrew Johnson, then being President of the United States, as such President, granted to said Thomas H. Watts full pardon and amnesty for all offences by him commited, arising from participation, direct or implied, in the said insurrection and rebellion mentioned in said information; and on the 19th day of August, 1865, the said President granted to said James A. Farley full pardon and amnesty for all offences by him commited, arising from participation, direct or implied, in the said insurrection and rebellion, which said pardons are and were subject to certain conditions therein described and expressed, copies of which said pardons are hereto attached, marked Exhibit A and Exhibit B, as part of this answer; and these defendants aver that the said Thomas H. Watts, on the day of October, 1865, and the said James A.

Farley, on the 21st day of August, 1865, respectively, duly accepted said pardons respectively, and have respectively complied with all the conditions prescribed in and by said pardons; and these defendants insist that the said several acts as propounded and alleged, as having been done by the said Watts and Farley, respectively, with the intent as therein alleged, were offences by said Watts and Farley respectively committed, arising from participation in said
16 rebellion, and that the said cotton in said article mentioned was, by the force and effect of said pardons, the said acceptances respectively of the same, and compliance with the said conditions therein prescribed, was relieved from forfeiture under said acts of Congress refered to in said information. Upon information and belief, these defendants deny that the proclamation mentioned in and embraced and required by said acts of Congress, approved August 6th, 1861, has ever been issued. Upon information and belief, they also deny that any of said cotton was ever given by said Watts, as alleged in said information; and they aver thatthe transaction refered to in said information, as a sale or gift by said Watts, was not a gift by said Watts, but a sale of said 120 bales of cotton by said Watts, or by his agent, to said Farley, agent or officer as aforesaid, either for the bonds or treasury notes of said Confederate States. Upon information and belief, these defendants deny that said 120 bales of cotton, or any part thereof, ever became the property of said Confederate States, or of the United States, or liable to seizure, condemnation, and sale as alleged in said information. These defendants aver and state that after said 120 bales of cotton, and several thousand other bales of cotton had been stored in said warehouse of J. F. Johnson & Co., by said James A. Farley, agent or officer as aforesaid, as alleged in said information, a large amount of money became due to the owner or owners of said warehouse (of whom said Johnson was one, if not the only one) for the storage of said 120 bales of cotton, and of said several thousand other bales of cotton; that the amount thus due for storage at and before any of said 120 bales was removed from said wharehouse, was far greater than the value of said 120 bales; that by the law of the land a lien is given for such indebtedness for storage in favor of the warehouseman upon all the cotton on which such indebtedness arises; that said Johnson did not remove, or attempt to remove, any of said 120 bales from said warehouse until the fact became well known that the military forces of the said Confederate States had determined, in accordance with the orders of the acting government or chief officials of said Confederate States, to burn not only all of the cotton
17 in said warehouse, but all of the cotton in every warehouse in the same city where said warehouse was, that is, in the city of Montgomery, Alabama; that after said burning was thus determined upon, and whilst it was expected to take place very soon, and only a short time before it did take place, to wit, some hours before the burning did take place, the said Johnson being a creditor, with a lien as aforesaid, and having the large debt for storage as aforesaid, with a lien therefore as aforesaid, and having no other means of saving or

collecting any part of said indebtedness, (tho' he had demanded the same and failed to collect it,) did cause said 120 bales of cotton to be removed from said warehouse to what he considered a place of safety, and thus saved it from destruction, when but for such removal it would have been destroyed by fire, as the other bales of cotton not removed from said warehouse were, on or about the 10th day of April, 1865. The said Johnson under the circumstances existing at the time of said removal, honestly believed, and still believes and insists, that he had the right to remove and thus save said 120 bales of cotton, and to appropriate the same or its proceeds to the payment and extinguishment pro tanto of said indebtedness and lien; that he did accordingly remove and thus save said 120 bales of cotton from entire destruction by fire, as aforesaid, and did appropriate it or its proceeds (except expenses incurred by him properly in removing and saving, and protecting said 120 bales, which expenses were considerable in amount) to the payment and extinguishment pro tanto of said indebtedness and lien; that no injury was done or intended to the United States, or to any other person, by the said removal saving, and appropriation of said 120 bales of cotton; that said Morris did not order or direct or participate in said removal, saving, and appropriation of said 120 bales of cotton, except as herein stated, thus the said Morris did not know of said removal until after it had been made; upon the request of said Johnson that the said Morris would pay one Carpenter what he (Johnson) owed Carpenter for drayage of some 120 bales of cotton, not mentioning any marks, or otherwise describing the cotton, Morris agreed to pay Carpenter for such drayage, and sometime afterwards did pay him, having between the said removal and the said payment to Carpenter found out that this drayage debt was for the drayage in removing said 120 bales. Between the said removal of said 120 bales and said payment to Carpenter, said Johnson stated in substance to said Morris, that he (Johnson) was ruined by the said burning of his wharehouse and the cotton therein, and that unless he could make available the said 120 bales removed, saved, and appropriated by him as aforesaid, he was unable to procure necessaries for his family, and that if Morris would advance him (Johnson) on said 120 bales what was needed to procure family supplies and necessaries, and assist in protecting the same from seizure by the military or theft, he (Johnson) would give him one half of the net proceeds thereof when sold. Thereupon Morris agreed to make the needed advances, and complied with that agreement. The said Johnson afterwards, to wit, on or about the day of , 1865, sold to George Floyd the said 120 bales at ten cents per pound, the aggregate amount for which it was so sold being about fifty-seven hundred dollars, (the precise amount not recollected.) Very soon after this sale by Johnson, Floyd went to said Morris and told him in substance that he (Floyd) had bought of Johnson the said 120 bales of cotton, and that Johnson had told him (Floyd) at the time of the sale, that he (Morris) had an interest in the proceeds. Morris in reply to Floyd stated the facts that Johnson had the right to sell said cotton; that Morris was interested in the pro-

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ceeds, and that the money due for the cotton on the sale might, or ought to be paid to him. The money was paid by Floyd to Morris, who thereupon settled with Johnson upon the basis of the arrangement hereinabove shown.

The foregoing shows in substance what Morris did in relation to said cotton. From the time said Johnson removed said 120 bales, he in good faith claimed and held the same as his own pro-
19 perty, and as so much received or paid on said indebtedness for storage, and as subject to any arrangement he might make concerning it. He was so claiming and holding said 120 bales at or before the said surrender of said Lieutenant General R. Taylor mentioned in said information. Answering the 8th article of said information, these defendants deny the several statements therein contained; and in connection with this denial they here reiterate and repeat the several statements and averments hereinabove made by them. The said 120 bales were sold by Johnson to Floyd, as aforesaid, at what was its then market value in said city; and at no time between its said removal and the time of said sale could any higher value been obtained for it than was obtained from said Floyd, in said city, where said cotton was. The time of said sale to Floyd was on or about the day of June or July, 1865, the precise time not recollected.

These defendants file this as their joint answer, as well as the answer of each of them separately, and pray that the same may be regarded as the separate answer of each, as well as the joint answer.

With this answer they also file their exceptive allegations, in the nature of a demurrer to the said information, and their plea to said information. They pray that these exceptive allegations and said plea may be deemed and taken as the several exceptive allegations and plea of each, as well as the joint plea and exceptive allegations of both. They also pray that their said exceptive allegations may not be deemed and taken as overruled or waived by their said plea, and that their said plea may not be deemed and taken as overruled or waived by their said answer. And these defendants further state and aver, by way of plea, that before the taking possession of said cotton by the said Johnson, from the time the same was stored in said warehouse aforesaid, it remained in his possession, as warehouse-keeper, and after taking possession of said cotton, as aforesaid, up to the time of said sale to said Floyd, and from thence up to the time of the filing of said information no seizure was at any time made of said cotton by any officers or person whatsoever. And these
20 defendants insist on this plea as a bar to any recovery against them under said information.

RICE, SEMPLE & GOLDTHWAITE,
*Proctors for Def'ts.*

The said Josiah Morris makes oath, upon the best of his knowledge, information, and belief, that the statements hereinabove contained in the foregoing answer and plea are true.

JOSIAH MORRIS.

Sworn to and subscribed before me this 5th day of December, A. D. 1866.

E. C. N. BLAKE, *Cl'k.*

*Exhibit A.*

Andrew Johnson, President of the United States of America, to all to whom these presents may come, greeting:

Whereas Thomas H. Watts, of Montgomery county, Alabama, by taking part in the late rebellion against the government of the United States, has made himself liable to heavy pains and penalties; and whereas the circumstances of this case renders him a proper object of executive clemency: Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Thomas H. Watts a full pardon and amnesty for all offences by him committed, arising from participation, direct or indirect, in the said rebellion, conditioned as follows, viz: This pardon to begin and take effect from the day on which the said Thomas H. Watts shall take the oath prescribed in the proclamation of the President, dated May 29th, 1865, and to be void and of no effect if the said Thomas H. Watts shall hereafter at any time acquire any property whatever in slaves, or make use of slave-labor, and that he first pay all costs which may have accrued in any proceeding hitherto instituted against his person or property;
21 and upon the further condition that the said Thomas H. Watts shall notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon.

In testimony whereof, I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this day of October, A. D. 1865, and of the independence of the United States the ninetieth.

[SEAL.] ANDREW JOHNSON.

By the President:

WILL. H. SEWARD, *Secretary of State.*

*Exhibit B.*

Andrew Johnson, President of the United States of America, to all to whom these presents shall come, greeting:

Whereas James A. Farley, of Montgomery county, Alabama, by taking part in the late rebellion against the government of the United States, has made himself liable to heavy pains and penalties; and whereas the circumstances of his case render him a proper object of Executive clemency: Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said James A. Farley a full pardon and amnesty for all offences by him committed, arising from par-

ticipation, direct or implied, in the said rebellion, conditioned as follows, viz: This pardon to begin and take effect from the day on which the said James A. Farley shall take the oath prescribed in the proclamation of the President, dated May 29th, 1865, and to be void and of no effect if the said James A. Farley shall hereafter at any time acquire any property whatever in slaves, or make use of slave-labor, and that he first pay all costs which may have accrued in any proceeding hitherto instituted against his person or property; and upon the further condition that the said James A. Farley shall
22 notify the Secretary of State, in writing, that he has received and accepted the foregoing pardon.

In testimony whereof, I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this nineteenth day of August, A. D. 1865, and of the independence of the United States the ninetieth.

[SEAL.] ANDREW JOHNSON.

By the President:

WILL. H. SEWARD, *Secretary of State.*

Filed Dec. 5, '66. E. C. V. Blake, cl'k.

In the District Court of the United States for the middle district of Alabama.

THE UNITED STATES OF AMERICA, on information,
*v.*
ONE HUNDRED AND TWENTY BALES of Cotton and Josiah Morris and John F. Johnson.

Come the defendants, by their proctors, Rice, Semple & Goldthwaite, and, without admitting any of the allegations in said information propounded, insists that the same, as therein alleged and set forth, are not sufficient in law to have a decree against these defendants, and these defendants therefore except to said information and assign as causes of exception the following:

1st. That said information, while proceeding against said cotton therein mentioned as subject to confiscation and condemnation under the acts of Congress of 6th August, 1861, and 17th July, 1862, refered to in said information, does not show that there was any valid and subsisting seizure of said cotton, or any part thereof, at the time of filing said information.

23 2nd. That said information, while proceeding against said cotton as subject to confiscation and condemnation under said acts of Congress, does not show that any seizure of said cotton was made, or any part thereof, under either of said acts, by order of the President or otherwise.

3rd. That said information does not show that said cotton, or any

part of the same, was seized during the existence of any insurrection or rebellion.

4th. That said information does not show, without repugnancy, the cause or causes of forfeiture, condemnation, or decree, as to these defendants, so that a plain and direct issue can be made upon the charge or charges and the evidence confined to the matters in issue.

5th. Duplicity and multifariousness in proceeding against said cotton, as subject to forfeiture and condemnation under said acts of Congress, and against these defendants for a wrongful conversion of said cotton.

6th. That the causes alleged in said information for a decree against these defendants are insufficient in law.

RICE, SEMPLE & GOLDTHWAITE,
*Proctors for Defendants.*

Filed 5th day of December, 1866. E. C. V. Blake, cl'k.

In the District Court of the United States for the middle Dirtrict of Alabama.

24 *Findings and Decree.*

THE UNITED STATES OF AMERICA
*vs.*
120 BALES OF COTTON AND JOHNSON & MORRIS.

*Findings, Decision and Decree.*

1st. I find, as matter of fact, that the 120 bales of cotton, the subject of the information and claim, became the property of the so-called Confederate States on or about the first day of December, A. D. 1862.

2nd. That before the first day of December, A. D. 1862, the said cotton was the property of Thomas H. Watts, who, on or about that day, parted with his title thereto and his possession thereof to the said so-called Confederate States.

3rd. That James A. Farley, acting as, and being the recognized agent of the so-called Confederate States, and upon its behalf, paid to the said Thomas H. Watts, and the said Thomas H. Watts received in exchange for said cotton, certain bonds or treasury notes of the said Confederate States, and that said bonds and treasury notes, at the time and place of such purchase and sale, had a marketable value, and could have been then there exchanged for gold and silver.

4th. That up to the time of the surrender of the armed forces, under the command of Richard Taylor, a general of the so-called Confederate States, to Gen. J. R. S. Canby commanding an army of the United States, to wit, the fourth day of May A. D. 1865, the said 120 bales of cotton continued to be the property of the said so-called Confederate States and were included in and by the terms of the said surrender, and yielded up to the United States as subject of capture of war.

5th. That the defendant, Johnson, freely, and of his will, received the said 120 bales of cotton into his own house at Montgomery, and freely, and of his will, kept the same in his said warehouse for the space of the three years and upwards, to the use and subject to the disposition of the so-called Confederate States, and that in this the said Johnson aided and abetted the rebellion then and until the time of the surrender hereinbefore mentioned existing in the State of Alabama against the United States.

6th. That the said 120 bales of cotton after the said sale and exchange as aforesaid and before the surrender herein before mentioned, were taken and removed out of the manual possession of the said so-called Confederate States by the defendant, Johnson, with the knowledge and co-operation of the defendant, Morris, and that this dispossession was without any authority from and without the knowledge of the said so-called Confederate States, or any of its recognized agents.

7th. That subsequently to the said taking and deportation of the said 120 bales of cotton by the defendant, Johnson, they were taken possession of by the defendant, Morris, with the knowledge and consent of the defendant, Johnson, and afterwards sold by the said Morris, and the proceeds of the sale thereof appropriated by him.

8th. That the defendant, Morris, at and before the time of the said taking and sale by him of the said cotton, was cognizant of the ownership thereof by the said so-called Confererate States.

9th. That the said 120 bales of cotton were sold by the said Watts as aforesaid, and purchased by the said the so-called Confererate States, with the intent to use and employ the same in aiding, abetting and promoting an insurrection then existing against the United States, and with the intent to aid, abet, and promote resistance
26 to the laws of the United States; and that before, and at the time of the transfer and exchange thereof, as aforesaid, by the said Watts, he was engaged in aiding and abetting an armed rebellion against the United States; and that during the whole time of the ownership of the said cotton by the said so-called Confederate States, it was kept by them with the intent to use and employ the same in aiding, abetting, and promoting an insurrection during all that time existing against the United States, and with the intent to aid, abet, and promote resistance to the laws of the United States.

10th. That the aggregate value of the said 120 bales of cotton aforesaid, is thirty thousand dollars.

And as matter of law upon these facts I find—

1st. That the said 120 bales of cotton were and are lawful subject of prize and capture, and condemnation.

2nd. That the United States are entitled to recover against the defendant, Johnson, & Morris, the full value of the said cotton, so as aforesaid taken by them.

And it is ordered and adjudged and decreed that the United States have judgement of condemnation against the cotton and judgement

against the defendants, John F. Johnson and Josiah Morris, for the sum of thirty thousand dollars and costs, that execution issue therefor.

Montgomery, December, 17th, 1866.

RICHARD BUSTEED *Judge, &c.*

Filed December, 17th, 1866.

E. C. V. BLAKE, *Clerk.*

District Court of the United States for the middle District of Alabama.

*Prayer for and allowance of Appeal.*

THE UNITED STATES OF AMERICA
*vs,*
JOSIAH MORRIS, JOHN F. JOHNSON.

The above-named respondents, conceiving themselves aggreived by the final sentence or decree entered on the 17th day of December, one thousand eight hundred and sixty-six, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

JOSIAH MORRIS,
JOHN F. JOHNSON.

The appeal prayed for in the aboved-entitled cause, by the aforesaid Josiah Morris & John F. Johnson, is hereby allowed, sufficient security for the costs having been duly given and approved by me this 4th day of April, 1867.

RICHARD BUSTEED,
*Judge of the District Courts of the United States, for Alabama.*

Filed in office this 4th day of April, 1867.

E. C. V. BLAKE, *Clerk.*

Rec'd. in office April 12th, 1867.

R. W. HENLY, *U. S. Marshal.*

Executed upon J. Q Smith, U. S. Dist. attorney, middle district of Alabama. Apl. 13, 1867.

R. W. HEALY, *U. S. Marshal.*
Per L. J. BRYAN, *Deputy.*

28 *Appeal Bond.*

Know all men by these presents that we, Josiah Morris, John F. Johnson, and William H. Smith, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the United States of America, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and admin-

istrators, jointly and severally, firmly by these presents. Dated this 4th day of April, 1867.

Whereas the above-bounded Josiah Morris and John F. Johnson have appealed to the Supreme Court of the United States from a decree of the District Court of the United States for the middle District of Alabama, bearing date the 17th day of December, 1866, in a cause in which the United States was libellant and the said Josiah Morris and John F. Johnson were respondents: Now, therefore, the condition of the obligation is such, that if the aboved-named appellants, Josiah Morris and John F. Johnson, shall prosecute their appeal with effect and pay all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.] JOSIAH MORRIS,
[SEAL.] JOHN F. JOHMSON,
[SEAL.] WM. H. SMITH.

I approve of this bond. April 4, 1867.

RICHARD BUSTEED, *Judge, &c.*

Filed in this office this 4th. day of April 1867.

E. C. V. BLAKE, *Clerk.*

29 *Citation in Appeal.*

UNITED STATES OF AMERICA:

To the United States of America greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States on the first Monday in December next, pursuant to an appeal from a decree of the District Court of the United States, for the middle District of Alabama, wherein Josiah Morris and John F. Johnson are appellants and you are appellee, to show cause, if any there be, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the honorable Richard Busteed, jndge of the said District Court, this 4th day of April, 1867.

RICHARD BUSTEED,
*Judge of the District Courts of the United States, for Alabama.*

Filed in office this 4th day April, 1867.

E. C. V. BLAKE, *Clerk.*

Rec'd, in office Apr. 12, 1867.

R. W. HENLY, *U. S. Marshal.*

Executed upon J. Q. Smith, U. S. dist. attorney middle dist. Ala. Apr. 13, 1867.

R. W. HEALY, *U. S. Marshal.*
Per L. J. BRYAN, *Deputy*

UNITED STATES OF AMERICA, *Middle District of Alabama,*

I, E. C. V. Blake, clerk of the United States District Court, for the middle district of Alabama, do hereby certify that the foregoing pages, numbered from number one to number twenty-nine, inclusive, contain a full true and correct copy of all the proceedings had in the case of the United States *versus* 120 bales of cotton Josiah Morris and John F. Johnson, now on file in this office, which said case was regularly tried at a term of said Court began and held at Montgomery on the fourth Monday of November, A. D. 1865, and an appeal taken thereon, to the Supreme Court of the United States.

Witness my hand and the seal of the United States District Court for the middle district of Alabama this 26th day of November, A. D. 1867.

[SEAL.] Attest: E. C. V. BLAKE,
*Cl'k U. S. Courts Middle District of Alabama.*

UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the 1st Monday of December next, pursuant to an appeal from a decree of the District Court of the United States for the middle district of Alabama, wherein Josiah Morris and Johnson F. Johnson are appellants and you are appellee, to show cause, if any there be, why the said decree should not be corrected and speedy justice be done to the parties in that behalf.

Witness the Honorable Richard Busteed, judge of the said District Court this 4th day of April, 1867.

RICHARD BUSTEED,
*Judge of the District Courts of the United States for Alabama.*

DISTRICT COURT OF THE UNITED STATES,
*Middle District of Alabama:*

I, E. C. V. Blake, clerk of the court aforesaid, do hereby certify that the above citation, with the service of the marshal endorsed thereon, is the original citation in the case of "United States *vs.* 120 bales of cotton, Josiah Morris and John F. Johnson," filed in the clerk's office of this court on the fourth day of April, A. D. 1867.

Witness my hand and the seal of the seal of the United States District Court for the middle district of Alabama this the 28th day of November, A. D. 1867.

[SEAL.] Attest: E. C. V. BLAKE,
*Clerk U. S. Dist. Court Middle District of Alabama.*

Endorsed: The United States *v.* Josiah Morris, John F. Johnson. Citation in appeal. Original. Filed in office this 4th day April, 1867. E. C. V. Blake, clerk. Rec'd in office, Apr. 12, 1867. R. W. Henly, U. S. Marshal. Executed upon J. V. Smith, U. S. Dist. Attorny, middle dist. Ala. Apr. 13, 1867. R. W. Henly, U. S. Marshal. Per L. J. Bryan, deputy. Serving copy, $2 00.

31 District Court of the United States for the middle district of Alabama.

*Fi. Fa.*

UNITED STATES OF AMERICA:

The President of the United States to the marshal of said district, greeting:

You are hereby commanded, that of the goods and chattels, land, tenements of Josiah Morris and John F. Johnson, of said district, you cause to be made the sum of thirty thousand dollars, with interest thereon from the seventeenth day of December, A. D. 1866, which the United States of America at a term of said court began and held on the fourth Monday of November, A. D. 1866, have recovered against them for their damages; also the sum of two hundred and eighty-two dollars and fifty-five cents, which to the said United States of America in the same court was adjudged for costs and charges in that behalf expended, whereof the said Josiah Morris and John F. Johnson convicted, as appears of record; and that you have the said sum of money before the said District Court on the fourth Monday of May next, at the place of holding said court, at Montgomery, to render to the said United States of America said sum of money and the said damages and costs aforesaid; and have you then and there this writ.

Witness Hon. Richard Busteed, judge of the court aforesaid, this fourth Monday of November, in the year of our Lord one thousand eight hundred and sixty-six.

Issued the fourteenth day of January, in the year of our Lord,
32 onethousand eight hundred and sixty-seven.

[SEAL.] Attest: E. C. V. BLAKE,
*Clerk D. C., Middle District of Alabama.*

*Marshal's return.*

Received Jan. 15, 1867. Levied upon lot No. 17, on north side of Market, New Philadelphia; lots No. 15 and 16, on the north side of Monroe street, and lot No. 4, on the east side of Lawrence street; lots No. 9 and 10, square 8,150 feet on Goldthwait street by 200 feet on Herron street; lot No. 5 as designated in a platt thereof, and being the east half of 20 acres of land of the south half of the southwest half of southwest quarters of sec. 17, T. 16, R. 18; lot No. 5 on Perry street, commencing from the west corner of Perry and South steeets 334 feet and 4 inches, and measuring therefrom 55 feet on Perry street, and 237 feet west, and lot No. 6 on Perry street, measuring 55 feet on Perry street by 237 west; a lot of land measuring 80 feet front on west side of McDonough street, extending immediately in the rear 150 feet on the north side of Adams street, being a part of the southeast corner of the square, and lying south of College Hill seminary. A portion of lot No. 1 in Goode platt, beginning at a point on the west side of Court street, 110 feet from the intersection of said

street with Line street; thence west 200 feet; thence south 105 feet to the northwest corner of John Benken's lot; thence east along the line of said Benken 200 feet to Court street; thence north along side of Court street 105 feet to the beginning. Lot No. 8, on west side of Perry street, commencing from the west corner of Perry and South streets 764 feet 4 inches, and measuring therefrom 100 feet on Perry street and 240 feet more or less west; lot No. 13, on the north side of Monroe street, commencing 50 feet from the corner of Monroe
33 and Lawrence streets, and running back 110.50 feet, fronting on Monroe street.

A lot of land commencing at the southeast corner of lot No. 5, south of Jefferson street, in square 22 of Scott's platt, running west, 20 feet on Jefferson street; thence north, 150 feet; thence east, 20 feet; thence south to the beginning.

Lot No. 17, on the south side of Madison street.

Part of lot No. 5, square 23, commencing at a point on Montgomery street, 100 feet from the corner of Montgomery and Catoma streets; thence north, 100 feet to the north line of the lot; thence west, 50 feet; thence south, 100 feet; thence 50 feet to the beginning.

Lot No. 14, on the east side of [of] Court street, commencing 760 feet from the corner of Court and South streets; running south 100 feet; running east 228 feet; thence north, 100 feet; thence west, 228 feet, to the beginning.

Lot No. 36, on the [on the] north side of street, New Philadelphia, one undivided half interest in lot No. 7, on the west side of Court street, measuring 23 feet and 6 inches on Court street by 109 feet rear.

Lot No. 36, on south side of Washington street, fronting on Washington street feet, and 160 feet back.

Lot No. 18, 50 feet by 160 feet.

And lots 19 and 20, 50 feet by 100 feet each, fronting on Madison street, and known as the Billongee property, as the property of Josiah Morris, to satisfy this execution.

Jan. 16, 1867.

JOHN HARDY, *U. S. Marshal.*

Rec'd $31,689 55 in full satisfaction of this execution.
March 25, 1867.

JOHN HARDY, *Marshal.*

34 District Court of the United States for the middle dist. of Alabama, Nov. term, 1866.

*Order of distribution.*

U. S. AMERICA
*vs.*
120 BALES OF COTTON, JOSIAH MORRIS, and John F. Johnson.

In this proceeding a decree of condemnation having heretofore been rendered against 120 bales of cotton, and a judgment for the value thereof, namely, thirty thousand dollars, against Josiah Morris and John F. Johnson, and execution to be issued thereon, it is now ordered, as follows:

1st. That five per cent. of the amount of said judg't, when collected, be paid over to the U. S. dist. att'y, J. Q. Smith, as a reasonable fee for his services in the prosecution of these proceedings.

2d. That one per cent. of the amount of said judg't, when collected, be paid over to the U. S. marshal, John Hardy, as a reasonable fee for his services rendered in their proceedings.

3d. That one per cent. of the amount of said judg't, when collected, be paid over to the U. S. clerk, E. C. V. Blake, as a reasonable fee for his services rendered in these proceedings.

4th. That after all the costs, charges, aud disbursements legally incurred herein are deducted from the amount of said judgment, one half of the remainder to be paid over to E. R. McCroskey, who has heretofore lodged an information with the dist. att'y of the United States, which information is to be filed in the clerk's office
35 herewith; the other one-half to be held in the registry of the court, subject to the order of the Secretary of the United States, as provided by law.

5th. The clerk will take and file receipts under this order with the papers in these proceedings, and this order.

Dec. 29, 1866.

RICHARD BUSTEED, *Judge*.

UNITED STATES OF AMERICA, *Middle District of Alabama:*

I. E. C. V. Blake, clerk of the court aforesaid, do hereby certify that the foregoing pages numbered from No. one to No. four, and part of No. five, contain a full, true, and correct transcript of the execution and order of distribution in the case of "United States of America *vs.* 120 Bales of Cotton, Josiah Morris, and John F. Johnson."

Witness my hand and the seal of the United States District Court, middle district of Alabama, this the 12th day of December, A. D. 1867.

Attest:

E. C. V. BLAKE,
*U. S. Dist. Court, Middle Dist of Alabama.*

# SUPREME COURT OF THE UNITED STATES.

## No. 163.

DECEMBER TERM, 1868.

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MORRIS & JOHNSON, CLAIMANTS OF ONE HUNDRED AND TWENTY BALES OF COTTON,

vs.

THE UNITED STATES.

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BILL OF EXCEPTIONS.—FILED 14 OCTOBER, 1868.

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District Court of the United States for the middle district of Alabama.

UNITED STATES
*vs.*
JOHN F. JOHNSON & JOSIAH MORRIS, 120 bales of cotton.

Be it remembered that at a District Court of the United States, held at Montgomery, for the middle district of Alabama, on the 17th day of December, A. D. 1866, the following were had in the above-entitled cause. The cause coming on to be heard, the defendants, Johnson & Morris, demanded a trial by jury, and insisted that the said cause could not be tried by the court without a jury, but the cout decided that the said defendants were not entitled to a jury trial, and that the court should try the same without a jury, and thereupon denied to the defendants a jury trial, and proceeded to hear and determine said cause without a jury, to which rulings and decision of the court the defendants severally excepted.

The defendants then insisted on the several exceptive allegations filed by them in this cause, and the court took up the same for consideration, and after argument by the attorneys of the parties, the court overruled each of the said exceptive allegations of said de-

fendants, and each of the said defendants excepted to the several rulings of the court thereupon.

Thereupon the court proceeded to hear the testimony in the cause, which substantially proved the facts as found by the decree of the court, as far as the same are therein recited. It was however proved that the 120 bales of cotton were purchased by the so-called Confederated States through its agent, James A. Farley, in consideration of the payment by him or such agent of what is called confederate States treasury notes, which purchase was made of Thomas H. Watts, of Montgomery, Alabama. It was further proved that said Watts & Farley had been pardoned by the President of the United States, as stated in the answer of said defendants. It was further proved that no seizure of said cotton had been made by any officer, or other person in behalf of the United States, or under any process of court, the same having been sold by defendants to one Floyd, at 10 cts. per pound, and removed out of the State before the institution of these proceedings.

It was further shown that the allegations of the information or libel in this case, as to the terms of the surrender made by General Taylor to General Canby, as the same are set forth in the said information or libel, were correct and true, and that the highest price of cotton between the period of the removal and sale of said cotton above mentioned and the time of trial was from forty to fifty cents per pound, and that the said 120 bales weighed about 500 lbs.

The foregoing being substantially all the proof, the court proceeded to render a decree against the defendants, as appears by the record thereof, to which the defendants excepted; and this is signed and sealed by the presiding judge of said District Court as a record of the proof and exceptions in said cause, and the said exceptions are allowed, and this is ordered to be made and enrolled as a part of the record of said cause.

[SEAL.] RICHARD BUSTEED,
*Judge of District Court of Middle District of Alabama.*

I hereby certify that the foregoing is a correct copy of the original filed in this office.

Witness my hand and seal this ninth day of October, A. D. 1868.

[SEAL.] E. C. V. BLAKE, *Clerk.*

Endorsed: United States *vs.* John F. Johnson and Josiah Morris, 120 bales cotton. Filed Dec. 11th, 1867. E. C. V. Blake, clerk.

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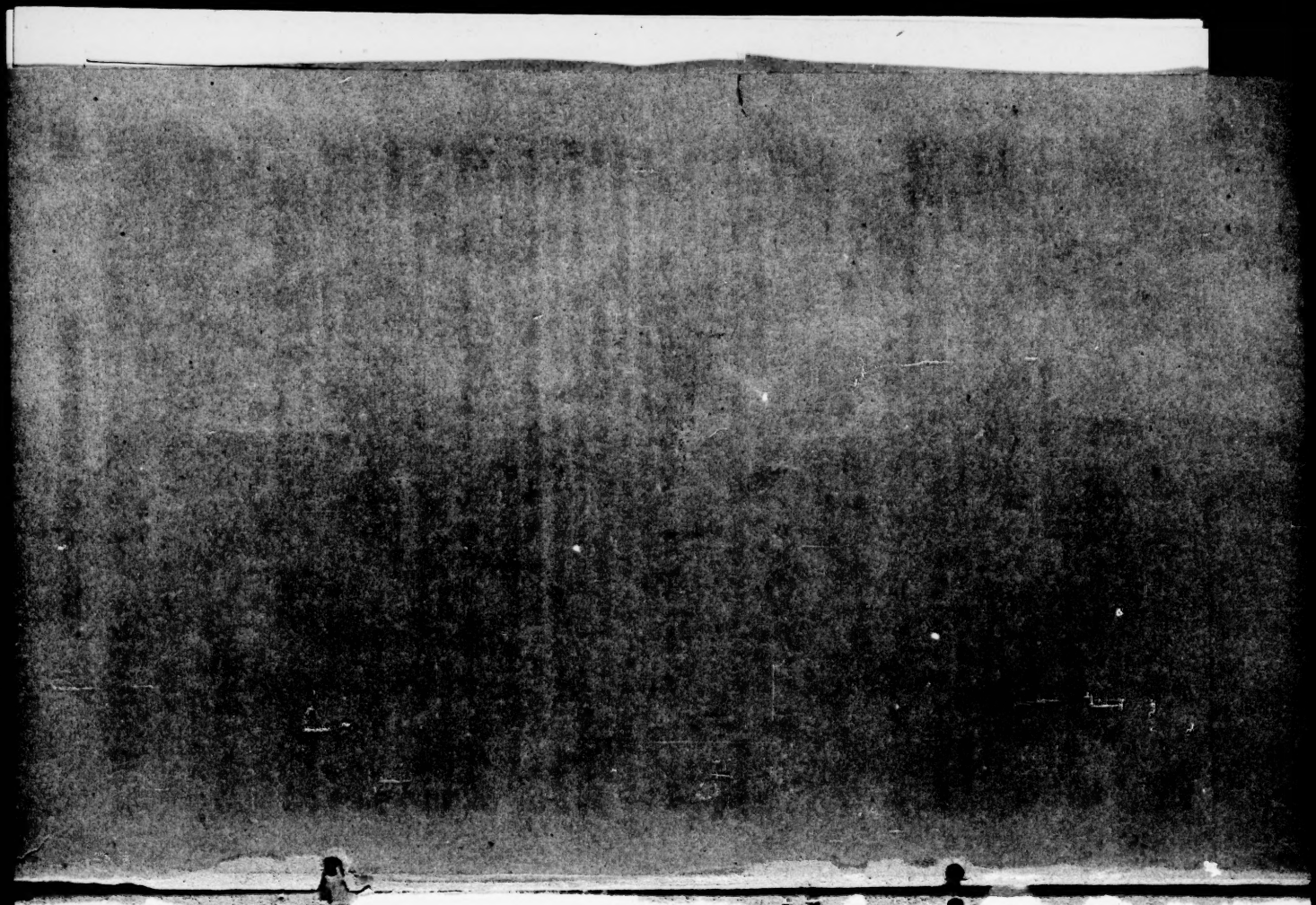

# UNITED STATES

# Supreme Court.

NO. 163.

**JOSIAH MORRIS AND JOHN F. JOHNSON, Appellants,**
*vs.*
**THE UNITED STATES, Appellee.**

## BRIEF OF W. P. CHILTON,
FOR APPELLANTS.

**Atlanta, Georgia :**

FRANKLIN PRINTING HOUSE—J. J. TOON, PROPRIETOR.

# UNITED STATES

# SUPREME COURT.

NO. 163.

**JOSIAH MORRIS AND JOHN F. JOHNSON, Appellants,**

*vs.*

**THE UNITED STATES, Appellee.**

## BRIEF OF W. P. CHILTON,

FOR APPELLANTS.

Atlanta, Georgia :

FRANKLIN PRINTING HOUSE—J. J. TOON, PROPRIETOR.

# United States Supreme Court.

JOSIAH MORRIS AND JOHN F. JOHNSON, *Appellants*,
*vs.*
THE UNITED STATES.

This is a novel, and, I may say, a most remarkable proceeding, being instituted to recover *damages for the conversion of* 120 *bales of cotton*, the property of the late so-called Confederate States, *by libel to be tried on the instance side of admiralty*. No cotton was seized; indeed, no process or warrant of arrest *in rem* was ever issued—the cotton having been sold and shipped beyond the limits of the State, and consequently without the jurisdiction of the Court, long before the libel was filed. A summons was issued against Morris and Johnson, commanding them to appear and answer "the libel of information filed against them and 120 bales of cotton," and this summons was served personally upon the defendants, and is the sole foundation of the suit.

The defendants sought, by all appropriate means, to avail themselves of the want of jurisdiction of the Court. They filed exceptive allegations to the libel, because it failed to show any seizure of the cotton, or any portion thereof, but, on the contrary, showed that the cotton had been disposed of by Johnson and Morris: (See Article 8 of libel.) Also, for duplicity and multifariousness, in proceeding against cotton, as subject to forfeiture and condemnation, and against these defendants for a wrongful conversion of it. These, among other objections which we shall insist upon, were over-ruled by the Court.

The defendants also *pleaded* that no seizure of the cotton had been made, and the bill of exceptions, signed and allowed by the presiding Judge, expressly states, that, "it was

proved that no seizure of said cotton has been made by any officer or other person in behalf of the United States, or under any process of Court, the same having been sold by the defendants to one Floyd, at ten cents per pound, *and removed out of the State before the institution of these proceedings.*"

The Court over-ruled all objections to the proceedings, denied to the defendants a trial by jury, but tried the facts himself, and gave a decree against the defendants for thirty thousand dollars, which decree bears date the 17th December, 1866; and on the 29th of the same month ordered a distribution to be made of the funds, when collected, as follows: Five per cent. of the amount to the U. S. District Attorney, J. Q. Smith; one per cent. to the Marshal, and one per cent. to the Clerk, as reasonable fees for their services in these proceedings; and after deducting these charges, and all costs and disbursements legally incurred, one-half the remainder is ordered to be paid over to E. R. McCroskey, who has heretofore lodged an information with the District Attorney of the United States, which information is to be filed in the Clerk's office herewith; the other one-half "to be held in the registry of the Court, subject to the order of the Secretary of the Treasury of the United States, as provided by law." (See order of distribution, page 22.)

It is submitted that the record abounds in error.

1. The libel of information is insufficient in law, and the exceptive allegations, in the nature of a demurrer, should have been sustained.

A libel for a forfeiture, under either the Act of 6th of August, 1661, or 13th July, 1862, must aver that the thing sought to be condemned has been seized, and that said seizure still subsists. ["The Washington," 4 Blatchford's Cir. Ct. Rep. S. C. 17 Law Reps., 497. Taylor vs. Carryl, 20 How., 583—599. The Silver Spring, 1 Spr.

Rep., 551. 4 Cranch, 2. 2 Ware's Admiralty Rep., 362.]

The seizure, it is said, is a jurisdictional fact, and the absence of it is a fatal defect, of which advantage may be taken, in any stage of the proceedings. [See authorities above.]

By the Act of 6th of August, 1861, property used in aid of the rebellion is made the lawful subject of *prize and capture* wherever found, and it is made the duty of the President of the United States to cause the same to be *seized*, confiiscated and condemned. The Act of 17th July, 1862, authorized the *seizure* and confiscation of the property of certain persons engaged in the rebellion. In each, there must first be a *seizure*, to give jurisdiction. But no seizure is averred, and never was made. Again: The libel, after setting forth as against the 120 bales of cotton, two alleged grounds of forfeiture—one, because of its use in aid of the rebellion, the other, under the Act of 1862, because of the rebellious *status* of the owner; then proceeds, in Article 7, to show that the 120 bales became the property of the United States, by the terms of capitulation between Generals Taylor and Canby, on the 5th May, 1865, and that defendants, knowing this, wrongfully removed and sold said cotton, and converted the proceeds to their own use. Now, it is perfectly clear, that this conversion, while it may furnish ground for a common law action of trover, if the United States ever had possession of the cotton, which they had not, as shown by the facts recited in the decree, cannot be made the foundation of a proceeding in admiralty. It is wholly disconnected from the remedy given by the statutes above quoted, authorizing the *seizure* or *capture* of the *rem*, and a condemnation, as in revenue cases in admiralty. It is a clear misjoinder, and, if allowed, might bring all casses from the common law side into the admiralty Courts; for all that would be required to effect this, if such a principle obtain, would be to make the libel

contain some averments proper for admiralty cognizance, however unfounded in fact, and these will draw after them others, in debt, assumpsit, covenant, and trover, if added in the same libel. It follows, therefore, that the libel should have been dismissed as wholly insufficient and unwarranted by any law or rule of practice known to the Courts of the United States.

But upon the facts of the case, as shown by the bill of exceptions and the decree, I insist—

2nd. That the Court had no jurisdiction to proceed to a decree of condemnation of the 120 bales of cotton, when no cotton had ever been seized—when, in fact, the *rem* upon which such proceedings are based was shown to be without the jurisdiction of the Court. [*Taylor vs. Carryl*, 20 How., Reps., 583—599. "*The Silver Spring*," 1 Spr. Rep., 551' and cases above cited.]

The Court having no jurisdiction, the decree is wholly irregular. True, admiralty furnishes remedies for *marine* torts—for cases occurring on the sea, or on tide waters; but I know of no precedent for this case, which is an action of *trover*, brought by *libel*, and tried on the instance side of admiralty, for the conversion of cotton which, according to the *finding of the facts in the decree of the Court*, belonged to the Confederate States *at the time of the conversion*, and never belonged to the United States, and was never afloat at sea, so far as the libel or the proof discloses.

3. The denial of the right to a jury to determine the facts of the case, is clearly erroneous. If the Court had any jurisdiction to try the case at all, it should have been tried as a case at common law, so far as a jury is concerned. [Union Ins. Co. *vs.* U. S., 6 Wallace, 759. Armstrong's Foundry, 6 Wallace, 766. "The Sarah," 8 Whea., 391. "The Vengeance," 3 Dall., 297.]

4. It is only in cases of prizes and captures *during the*

*rebellion* that the Court is authorized by the statute to proceed for their condemnation in admiralty, as in revenue cases. [See Statutes at Large, vol. 12, p. 319—591.] No prize or capture was involved in this case. These are terms applicable to war. None was made. Peace prevailed when these proceedings were instituted, and of this the Court will take judicial notice. [1 Greul. Ev., § 3, 4, 5, 6. 13 Peters, 590. 12 Wend., 328. 37 New York Rep., 174—10 Tiffany.]

This is a penal statute, and should be limited to cases coming clearly within its purview. "Every statute derogatory to the rights of property, or that takes away the estate of a citizen, is to be construed strictly. It should never have an equitable construction in order to overthrow or divest an estate." [Vauhorne *vs.* Dorrance, 2 Dall., 316. "The Enterprize," 1 Paine's Rep., 32.]

5. As to the Act of 6th August, 1861, making property used in aid of the rebellion the subject of *capture and prize*, and authorizing the President to cause it "*to be seized*," confiscated, and condemned, in admiralty, no recovery can be had under it, for the reason that this cotton has never been seized, and is not in the custody of the Court, nor in the possession of any one who is a party to the record. And as respects the Act of 17th July, 1862, there can no recovery be had upon that, because the libel only charges Thos. H. Watts as coming within the provisions of that statute, and the record shows that he, and the party to whom he sold the cotton, (Farley,) had both been pardoned by the President. It has been decided by this Court that such pardon releases the property of the persons pardoned from the forfeiture of property seized under this Act. [Armstrong's Foundry, 6 Wal., 766. See also Ex-parte Garland, 4 Wallace, 380.]

It is, therefore, clear that this decree must be reversed on these points; and as either of them are fatal to the case, it should not be remanded, but the libel dismissed, with order

of restitution to be made to Josiah Morris of the money collected from him under the execution.

I have not deemed it necessary to notice the order of distribution to an informer, when the proceeding does not purport to be on behalf of one; nor that, in *such case* as this (an alleged conversion of property belonging to the United States,) there is no law authorizing any one to become an informer, and receive one half the recovery.

W. P. CHILTON,
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